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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.606(b),
Table of Allotments, TV Broadcast Stations;
and 73.622(b), Table of Allotments,
Digital Broadcast Television Stations
(Columbia and Edenton, NC)

MM Docket No. 04-289
RM-10802

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To: Secretary, FCC
Attn: Chief, Video Division
Media Bureau

Federal Communications Commission
Office of Secretary

REPLY COMMENTS

Hampton Roads Educational Telecommunications Association, Inc. ("Hampton Roads"), by its attorneys, provides this reply to comments filed in response to the *Notice of Proposed Rulemaking* in the referenced docket, DA 04-2396 (released August 6, 2004) ("*NPRM*").

In its own comments, Hampton Roads opposed the proposal by the University of North Carolina ("UNC"), licensee of noncommercial educational station WUND-TV, Columbia, North Carolina, to amend the TV Table of Allotments to reallocate Channel *2 from Columbia to Edenton, North Carolina. Comments supporting the proposal were filed by UNC and by Tyrrell County Board of Commissioners.¹ As shown below, however, their arguments in support of the proposal have serious flaws. Hampton Roads continues to believe that the proposal should be denied.

¹ As of this date, the FCC's Electronic Comment Filing System only reflects only one set of comments filed in this proceeding – those of Tyrrell County Board of Commissioners. A search of the file for this proceeding in the FCC's public reference room by a representative of counsel for Hampton Roads also reflected only the Tyrrell County filing, although comments were also filed by at least Hampton Roads and UNC. Hampton Roads was forced to seek out a copy of the Comments of UNC, which was graciously provided by counsel for UNC. However, because the FCC's files here are incomplete, Hampton Roads is unable to know whether any other comments were filed. If other comments were indeed filed and were not made known to Hampton Roads, this creates a problem which potentially invalidates the entire proceeding. At the very least, if the records of the Commission are ever brought current, and they show that other comments were filed, Hampton Roads reserves the right to respond to them in a reasonable time after learning of their existence.

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“Purely Administrative Redesignation” Argument

UNC argues that the city of license change for WUND from Columbia to Edenton is a “purely administrative redesignation” that will have no “real world” effect other than permit satellite access to WUND’s signal in certain counties in northeastern North Carolina. UNC Comments at 8. UNC explains that WUND is a satellite station rebroadcasting UNC’s statewide programming, has no studio in Columbia and originates no programming in Columbia (nor will it in Edenton). *Id.* Thus, to paraphrase UNC’s argument, since UNC has no local presence and it does not provide any particular level of local service to its existing community of license, it should make no difference to the public interest that the existing community loses its only TV station to another community, where UNC will also have no local presence nor provide any particular local service.

The problem here is obvious – UNC is *supposed* to have a local presence and meet local service obligations in the WUND city of license. The fact that it is not doing so (or, more likely, that UNC has chosen to downplay its local presence and service so as to bolster its argument) is certainly not grounds for waiving the FCC’s enduring allocation principles.

The FCC has made clear that even state public broadcasting networks have obligations to the local communities in which their stations are located.² For example, in *Georgia State Board of Education*, the FCC stated that “[the Commission] has [never] indicated, directly or indirectly, that licenses were granted to state educational networks for the purpose of providing statewide coverage, not local service.”³ On the contrary, the FCC has soundly rejected such arguments,

² Indeed, there is a long and unbroken line of precedent declaring that all broadcasters must serve local needs. Scarcely three months ago, the Commission re-affirmed this duty, stating in clear, unambiguous language that although “the Commission deregulated many behavioral rules for broadcasters in the 1980s, it did not deviate from the notion that [broadcasters] must serve their local communities.” *In re Broadcast Localism*, Notice of Inquiry, MB Docket No. 04-233 at ¶ 1 (Released July 1, 2004).

³ *In re Georgia State Board of Education*, Memorandum Opinion & Order, 70 FCC 2d 948, 956 (1979).

stating that while “the Commission has recognized the economic benefits of centralized operations for noncommercial broadcast stations” and “[has] granted waivers to state and regional public television and radio networks to operate ‘satellite’ stations,” nevertheless “these stations have not been permitted to ignore local service obligations.”⁴

Thus, the fact (true or not) that WUND has no presence and provides no local service in Columbia is hardly supportive of UNC’s position in this matter.

Widespread Support Argument

UNC argues that the public interest, as expressed by citizens and local government officials in the affected region, “strongly supports” grant of the proposal. *Id.* at 9 *ff.* UNC cites the separate comments filed by Tyrrell County Board of Commissioners (the County in which Columbia is situated), support letters from other County Commissions in various of the counties north of Albemarle Sound, and literally hundreds of letters from viewers of UNC programming.

There are a variety of problems with the FCC basing its decision on these expressions of support. First, with all due respect to governmental officials providing their views in this proceeding, it doesn’t mean much to obtain an endorsement from an official whose constituents, by and large, are not adversely affected by the proposed action. We note that, while there is ample support from areas that would supposedly obtain access to satellite delivery of WUND-TV, the city of Columbia, which is after all the community that would lose its sole TV station, has not stated its support,⁵ and the support from Tyrrell County, in which Columbia is located, was apparently grudgingly given under pressure from UNC.⁶ Even if Columbia has been or

⁴ *In re Board of Visitors of James Madison University*, Hearing Designation Order, 8 FCC Rcd 1751 (1993); *In re Board of Regents, State of Florida*, Hearing Designation and Order, 9 FCC Rcd 4049 (1994).

⁵ At least Hampton Roads believes Columbia has not filed. As noted above, at n.1, the FCC’s files are incomplete with respect to this proceeding.

⁶ According to the attached article from the *Virginian-Pilot*, North Carolina Section, p. 27 (September 28, 2004), (available online at <http://epilot.hamptonroads.com/Repository/getFiles.asp?Style=OliveXLib:ArticleToMailGifMSIE&Type=text/html>)

In fact, UNC has not actually “shown” that there are 10,000 DBS subscribers in the Nine County Area. There is only an oblique hearsay reference buried deep in an Engineering Statement of Louis Robert du Treil, Jr., P.E., attached to the UNC Comments, that “Decisionmark Corp. has provided ... information [that] as of July, 2004, there are approximately 9,528 households served via satellite with local-into-local service within the North Carolina portion of the Tidewater Market.” However, neither du Triel nor UNC actually includes any documentation from Decisionmark or any other entity supporting the number or providing information that would permit the reliability of the number to be evaluated. Nor does the statement state that the Decisionmark information was actually provided to UNC or to du Treil.

It is the experience of counsel to Hampton Roads that the DBS industry zealously protects the confidentiality of its subscriber numbers. Even where the data is made available (though an entity called Skytrends) to particular types of entities (to counsel’s knowledge, only cable operators and franchising authorities), the information is confidential and cannot be shared with others. In an effort to get to the bottom of the matter, counsel for Hampton Roads contacted Decisionmark to inquire about obtaining information on the number of subscribers in any given area, but was told that Decisionmark does not have DBS subscriber counts and is not able to provide such numbers. Given that, and the rather oddly phrased reference to the number in the du Treil Engineering Statement, as noted above, Hampton Roads suggests that the number is not reliable. Thus, the 10,000 DBS subscriber number provides no basis for FCC action in this proceeding.

More to the point is what UNC has actually proved. Based on our review of the massive numbers of public support letters, there are only *three* unique letters from viewers that seem to

support UNC's position that potential DBS subscribers are being deprived of UNC's service -- one from a donor (Gregory C. Compher, Jarvisburg, NC) who says he is a DBS subscribers in the Tidewater market and can't get WUND, and another (Gaylord Swersky, Moyock, NC) who says that he called DirecTV to request UNC-TV and was told that DirecTV could not provide that programming; and another (Oni P. Houston, Corolla, NC) who claims that although he currently receives WUND on cable, he will be moving to an area where only satellite is available. These letters fail to dispel the FCC's concern that the alleged substantial gains in viewership from the WUND city of license change are mere speculation.

Finally, we note that, regardless of the outcome of this proceeding and its uncertain effect on DBS carriage of WUND in the Tidewater Market,⁸ no households in the North Carolina portion of the Tidewater Market are actually "unserved" by UNC's service. In fact, WUND puts a strong signal over the entire area, and is therefore available for receipt off the air, including by those households subscribing to DBS service.

The Ardmore-Sherman Case

Finally, UNC urges that the proposal is supported by precedent in the *Ardmore-Sherman* case,⁹ where the FCC did indeed redesignate the city of license of a commercial TV station from one city where it was the sole TV station to another. However, contrary to UNC's argument that the circumstances in *Ardmore-Sherman* were "far less compelling and unique" than the instant case, UNC Comments at 24, the opposite is clearly true. In *Ardmore-Sherman*, the FCC cited the following important supporting facts that have not been demonstrated here by UNC. First,

⁸ Even if the FCC permits WUND to change its city of license to Edenton, there is no guarantee that WUND will in fact be carried by the DBS providers in the Tidewater Market. Obviously, it is too late for carriage during the current must-carry cycle. More importantly, however, there may be issues of signal duplication, or signal quality, that will affect whether WUND ever gets carried.

⁹ *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Ardmore, Oklahoma and Sherman, Texas)*, Report and Order, 7 FCC Rcd 4846 (1992).

technical limitations there prevented the station from moving away from Ardmore, the previous city of license. Here, UNC concedes that there are no such constraints, UNC Comments at 25 n.24. Second, the licensee there maintained a studio in Ardmore (in addition to a studio in the new city of license, Sherman) and pledged to maintain the Ardmore studio, and thus the current level of local service. Here, UNC argues that it too will maintain the current level of service, but that argument is, as shown above, entirely hollow. In fact, the level of local service to be “maintained” in Columbia is essentially none. Third, the licensee there had a main studio in Sherman for many years, and was thus already addressing that new city of license’s local needs. Here, of course, UNC has no plans to put a studio or have any other local presence in Edenton – indeed, its plans for changing city of license *have nothing to do with any desire to provide local service to Edenton*. Finally, the licensee there claimed that the move was required to permit the station’s economic survival. Here, UNC has made no such claim.

CONCLUSION

Hampton Roads again respectfully requests that the Commission deny the petition filed by UNC for a change in the community of license for WUND.

**HAMPTON ROADS EDUCATIONAL
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Public TV trying to switch license city

Change would bring state's public TV programs to satellite viewers in northeast

BY CATHERINE KOZAK
THE VIRGINIAN-PILOT

A technicality in broadcast rules is keeping about 10,000 satellite television customers in eight northeastern North Carolina counties from seeing UNC-TV public television.

Officials with the Chapel Hill-based public television station have asked the Federal Communications Commission to change the city of license for the northeast station from Columbia to Edenton so that the local public television station can be broadcast to satellite users in the eight counties.

By changing the station identification of WUND-TV to Edenton/Columbia, satellite television customers in Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden, Currituck and Dare counties would receive UNC-TV as one of their local sta-

tion offerings.

Columbia is the city of license, but it falls outside the market area that is designated by the FCC for the eight counties. FCC rules allow satellite carriers to provide local stations only within boundaries based on market areas. And those northeastern counties fall within the Norfolk-designated market area.

Under the law, the license holder must be located in the market area it serves. So the station is trying to change the city of license to Edenton, which is included in the Norfolk market. Columbia is included in the Greenville market for satellite customers, which would not lose any service, said Tom Howe, UNC-TV director and general manager.

Howe said it's also an issue of fairness, because every resident pays about \$1.30 per year in state taxes to help pay

CHANGING CHANNELS

Columbia is the city of license for UNC-TV, but it falls outside the market area that is designated by the FCC for the eight counties. FCC rules allow satellite carriers to provide local stations only within boundaries based on market areas. And those northeastern counties fall within the Norfolk-designated market area.

for public television. Now, the eight counties receive only WHRO, the public television station in Norfolk.

"We believe that UNC-TV should be equally available to every North Carolina citizen," he said.

Last Tuesday, after a presentation by UNC officials, the Tyrrell County Board of Commissioners agreed to support changing the station identification to Edenton/Columbia.

For nearly 40 years, the tiny town of Columbia, the county seat, has enjoyed what amounted to free advertising in UNC's station identification.

"The board is not happy about it at all," said County Manager J.D. Brickhouse. "But they're doing it for the betterment of UNC-TV."

Carl W. Davis, the station's assistant general manager, said UNC petitioned the FCC for the change of city of license in 2003. The agency responded in July 2004 with a request for more information.

Columbia's town board will also likely support the change at its Oct. 4 meeting, Town Manager Rhett White said.

"There's going to be a bit of grumbling, but I expect that folks will probably endorse it," he said. "What I'm hearing in the community is people don't like it, but they understand it, and so they'll swallow hard and they'll accept it."

Columbia was assigned the

city of license in 1965. Davis said he can see why the community is a little reluctant to make the change.

"They look at this as their station," he said.

Davis said that the transmitter would stay where it is on the tower off U.S. 64 in Columbia; just the station identification would change.

Another reason for the change is a shift to a more local offering. Davis said WHRO does not have the North Carolina focus of UNC-TV.

"We're not asking to replace them here," Davis said. "It's not a question of WHRO or UNC. It's a question of WHRO and WUNC."

Comments on UNC-TV's petition will be accepted by the FCC until Oct. 12. Letters can be sent to UNC-TV at 10 T.W. Alexander Dr., P.O. Box 14900, Research Triangle Park, N.C. 27709-4900, or e-mail cdavis@uncctv.org.

■ Reach Catherine Kozak at (252) 441-1711 or at cate.kozak@pilotonline.com.

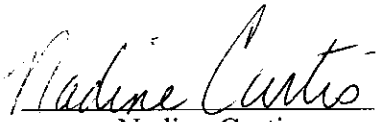
CERTIFICATE OF SERVICE

I, Nadine Curtis, hereby certify that copies of the foregoing Reply Comments have been served by Hand Delivery or by First Class United States Mail this 12th day of October, 2004, on the following:

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